IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 137 OF 1996

1. Suryakant Dashrath Yeola,
Occupation : Service, Residing
at Mulher, Taluka Satana, Dist.
Nashik

2. Purshottam Raghunath Wani
Occupation : Service, Residing
at Pimpalner, Taluka Sakri,
District Dhule,

3. Meenabai w/o Purshottam Wani
Occupation : Household
Residing at Pimpalner, Taluka
Sakri, District Dhule .. .. Appellants
[Original Accused
No.1, 3 and 5]

Versus

The State of Maharashtra .. .. Respondents
[Original Complainants]

Mr. Ashok Mundargi, Learned Counsel for the Appellants.
Mr. B.H. Mehta, Additional Public Prosecutor for the

State/ Respondents.

CORAM : S.K. SHAH, J.

DATED : 25.8.2004.

ORAL JUDGMENT :-

1. The three appellants, who are the original accused Nos. 1, 3 and 5 respectively, have filed this appeal against the order of conviction passed by the learned Second Additional Sessions Judge, Malegaon, District Nashik in Sessions Case No. 60 of 1990, convicting the three appellants of the offences punishable under Section 498(A) r/w section 34 of the Indian Penal Code and sentencing the accused no.1 to suffer R.I. for two years and to pay fine of Rs. 2000/- in default to suffer R.I. for six months and accused Nos. 3 and 5 to suffer R.I. for one month and to pay a fine of Rs. 500/- in default to suffer R.I. for ten days. In all seven accused were tried for the offences punishable under Section 302 r/w section 34 of the Indian Penal Code, alternatively punishable under section 306 r/w section 34 and 498(A) of the Indian Penal Code and all the other accused were acquitted of all the charges levelled against them. The appellants were also acquitted of the offences punishable under section 302 r/w section 34 of the Indian Penal Code and alternative charge under section 306 r/w section 34 of

the Indian Penal Code.

2. Briefly stated the story of the prosecution is that-

. Srawan Wani - PW5 is the resident of Pimpalner in Sakri Taluka, District Dhule. He happened to be the father of the deceased Mangala. Deceased Mangala got married with accused No.1. Their marriage was performed on 13.5.1989. After the marriage, she had co-habited with the accused No.1. Both of them lived at Pune as accused no.1 was serving in the Health Department at Pune. Accused No.1 and other members of his family, who have been acquitted by the Learned Trial Judge are resident of the village Mulher, Taluka Satana, District Nashik. From Pune the deceased had written a letter to her parents at Pimpalner. The letter [at Exhibit - 55] is dated 14.7.1989. In that letter the deceased complained to her parents about her ill-treatment at the hands of the accused No.1 and his two brothers, who were acquitted. She also complained about the demand was being made by the accused No.1 for the purpose of purchasing a plot in Pune for making construction on it. Yogesh [PW12], the brother of the deceased happened to go to Pune in search of a job for himself. During that period, he lived with the deceased and accused No.1. The

deceased Mangala also complained him about the harassment made to her and the demand of money i.e. of Rs. 15000/- for the purpose of purchasing a plot at Pune. Yogesh [PW12] happened to visit Pune again some time in May - June, 1990 when he had seen the accused No.1 assaulting the Deceased at the instigation of his brothers.

3. The deceased Mangala made similar complaints to her sisters and brothers and also to her parents when she happened to go to Pimpalner at her parents' house for endowing ceremony. She also made similar complaints when she lastly went to Pimpalner for the purpose of first delivery.

4. It s further story of the prosecution that the deceased Mangala returned to her in-laws place at Mulher on 1.11.1990. At that time, the accused No.1 was transferred from Pune to Dhule. The accused No.1 was searching for accommodation for himself and the deceased Mangala. The incident occurred on 2.12.1990. During that incident the deceased Mangala had ultimately succumbed to the burns of fire. The learned Trial Judge has held that neither the charge under Section 302 nor an alternative charge under Section 306 of the Indian Penal Code was established and consequently he held that the deceased had

accidentally burned and ultimately she died accidental death.

5. The incident was reported to the police on the basis of which initially an accidental death case was registered vide A.D.No. 19 of 1990 for the offences punishable under section 174 of the Indian Penal Code. Thereafter Police Sub-Inspector Ghodke [PW15] visited the spot at Mulher and drew panchnama [Exhibit - 36] as also inquest over the dead body of Mangala [at Exhibit-34]. From the spot, he seized various articles lying there. It is thereafter the complainant Srawan [PW5] learned about the incident. He therefore rushed to the Mulher. After the inquest panchnama was drawn and investigation was in progress, PW5- Srawan, father of the deceased Mangala stated that he had grievance about the accused persons. As such, PSI Ghodke [PW15 recorded the complaint of PW5-Srawan [Exhibit- 57], and on the basis of which registered the offences vide C.R. No.115/90 under section 498[A], 302 r/w section 34 of Indian Penal Code. He, as usual, recorded the statements of the various witnesses and after completing the investigation, he forwarded the charge-sheet to the Court of Learned Judicial Magistrate, First Class, who in turn, committed the case to the Court of Sessions, Malegaon, Dist. Nashik.

6. The learned Additional sessions Judge at Malegaon framed the charges against all the accused, to which all the accused pleaded not guilty and claimed to be tried. Their defence was of total denial and of false implication.

7. The prosecution led the evidence of as many as fifteen witnesses, which included the complainant PW5- Srawan, father of the deceased; Indubai [PW8], the mother; Shalini and Ratnamala [PW9 and PW10 respectively]- the sisters; Vasant and Yogesh [PW11 and PW12] - the brothers; Ekanath [PW6] - the cousin brother of PW5- Srawan; Balchandra Wani [PW7] - the brother of Srawan [PW5] and four neighbours.

8. While acquitting the accused of all the charges for the offences punishable under Section 302 and in alternative charge punishable under section 306 r/w section 34 of the Indian Penal Code, the learned Additional Sessions Judge convicted the three appellants of the offences punishable under Section 498(A) r/w section 34 of the Indian Penal Code and passed aforesaid order of conviction and sentences, which is being assailed in this appeal.

9. I have heard the learned Counsel for the

Appellants as also the learned Additional Public Prosecutor for the State.

10. The learned Counsel for the Appellants submitted that there is no sufficient evidence to convict the three appellants of the offences punishable under Section 498[A] r/w section 34 of the Indian Penal Code. The brothers, sisters and complainant, in his submission, are repeating the same things, as was told to them by the deceased Mangala. That refer to the demand of Rs. 15000/- made by the accused No.1 for purchasing a plot at Pune and the harassment like hurling abuses, beating and starving the deceased Mangala. He submits that there is material evidence only in the form of letter [at Exhibit - 55], written by the deceased to her parents within a period of two months from the date of incident that induced the complainant Srawan [PW5] to register a complaint against the accused persons. However, in his submission, this evidence is also not sufficient to prove the harassment as contemplated under Section 498 [A] of the Indian Penal Code. He further submitted that there was absolutely no evidence referring such demand of money or of harassment during the period of six months immediately prior to the death of the deceased Mangala. He further submits that there is evidence that the appellant No.2 and appellant No.3,

the original accused Nos. 3 and 5 respectively, who are staying at Pimpalner, at the place where the complainant Srawan [PW5] reside, have told the complainant that, if they wanted to see Mangala happy to be living with accused No.1, they should pay Rs.15000/- to the accused No.1. He further submits that even this evidence can not be said to be at the instance of accused No.1 so as to form a common intention between the three accused to harass deceased Mangala. Therefore, he submits that the learned Additional District Judge committed an error in recording the conviction against the appellants.

11. As against this, the learned Additional Public Prosecutor submits that apart from abusing, beating and starving the deceased Mangala, a persistant demand of Rs.15000/- itself was an harassment as contemplated under Section 498[A] of the Indian Penal Code and the appellant No.2 and appellant No.3 had joined hands with accused No.1 in making that demand from the deceased and the complainant. Therefore, he supports the judgment of the Trial Court.

12. I am taken through the entire evidence of the witnesses. The material evidence is of the complainant Srawan[PW5] - the father of the deceased Mangala. He states that for a period of fifteen days

after the marriage the deceased Mangala was treated properly. However, thereafter the accused started ill-treating her. They started asking the deceased to bring Rs.15000/- from him for purchasing a plot at Pune. He further stated that the accused persons used to abuse Mangala and were also not providing food to her. Yogesh [PW12]- son of the complainant Srawan[PW5], had gone to Pune and had made enquiry with Mangala and this complaint was also made to him by Mangala about the harassment. He further states that accused Nos. 3 and 5 i.e. appellant No. 2 and appellant No.3 acted as mediator in the settlement of the marriage of the deceased Mangala with the accused No.1. He states that they had also gone to his house and asked to pay Rs.15,000/- to the deceased for purchase of a plot. However, he was not in a position to satisfy their demand of Rs.15000/- because of his poor financial condition. He further states that he received a letter dated 14.7.1989 [at Exhibit - 55] from Mangala complaining about the demand of money and beating her by the accused No.1. He further states that about six months prior to the death of the deceased on 2.12.1990, the deceased had come to his house for the purpose of delivery. Even at that time, she had complained to her parents and brothers & sisters about harassment meted - out to her. He states that the appellant No.2 and appellant No.3 told

him that he should pay Rs.15000/- to the accused No.1, if Mangala- the deceased to leave happy life. Even then, he told them that he was not in a position to satisfy their demand. This happened about a month before the father of accused No.1 took Mangala to his place at Mulher after delivery of a female child. Similar is the evidence of other witnesses including all other witnesses from PW6 - Ekanath to PW11- Vasant Wani, who are cousin brother of PW5- Srawan, brother of PW5- Srawan and sisters and brothers.

13. A letter [at Exhibit - 55] was written by the deceased to her father Srawan [PW5]. The letter is dated 14.7.1989. It mentions that the accused No.1 was beating her on any pretext. That they were asking her to bring money from her father as they wanted to purchase a plot. When she explained to them that her father was not in a position to pay such amount, she was harassed. She also wrote in a letter that accused No.1 threatened to make her life difficult. The accused No.1 was also not bringing the grocery for the purpose of cooking. She also wrote that the accused No.1 was abusing her. In a letter she stated about her harassment at the hands of two brother -in- laws. However, that aspect need not be considered as both the brothers are acquitted by the Trial Court.

14. Besides this evidence, the direct evidence on this point of harassment and beating is the evidence of Yogesh [PW12] - the brother of the deceased Mangala. According to Yogesh, he happened to go to Pune at the place of accused No.1 within about two months from his marriage with Mangala - the deceased. At that time Mangala told him that accused No.1 used to ill-treat and assault her on the ground of demand of Rs.15000/- for the purchase of a plot at Pune. There also used to be quarals in his presence between the deceased and the accused No.1 and others. He also stated that accused No.1 also made demand of Rs.15000/- and threatened that else he would not maintain his sister i.e. deceased Mangala. He further states about his visit to accused No.1's house at Pune some time in May-June 1990. He stated that at that time he stayed with accused No.1 in his house. He had gone there for searching a job. During that period, he stated that, the accused No.1 used to assault Mangala at the instance of accused No.1's brothers and they also used to abuse Mangala. It was in June, 1990 that Mangala happened to go to her parents house at Pimpalner for the purpose of delivery. This is the material evidence on the point of alleged evidence punishable under section 498[A] r/w section 34 of the Indian Penal Code.

15. From the evidence of these witnesses and particularly the evidence of deceased's letter [at Exhibit - 55] and the evidence of Yogesh [PW12], it appears to be established that the accused No.1 was making a demand of Rs. 15000/- by asking the deceased to bring that amount from her parents and she kept on telling accused No.1 that her father was not having that financial condition to make the payment of Rs.15000/- for the purpose of purchasing a plot at Pune. The evidence also discloses that on many occasions the accused No.1 used to beat and abuse the deceased Mangala. As regards the allegation of starvation, there is obviously no sufficient evidence. As to the letter [at Exhibit 55], what the deceased mentioned was that the accused No.1 was not bringing grocery articles for cooking purpose and nothing more.

16. What is material to be noted is that there is absolutely no evidence of any neighbour of the accommodation at Pune where the accused No.1 and the deceased Mangala lived together when the alleged incident of assault, abuse etc. had taken place. There is also no evidence of any person who was staying near the parent's house of accused No.1 at village Mulher on that aspect. This has been specifically observed by the Trial Court also. However, what is necessary to be noted is that there

is absolutely no evidence as against the accused No.1 for having made a demand of Rs.15000/- either from the deceased or from her father Srawan [PW5] from June, 1990 when the deceased happened to go to her parents' house for the purpose of delivery till her accidental death occurred in December, 1990. During this period, the accused No.1 came to be transferred from Pune to Dhule. The demand of Rs.15000/- was for the purpose of purchasing a plot at Pune. It is, therefore, possible that the demand might not have remained alive as a result of accused No1's transfer to Dhule from Pune. At any rate, for a period of about five months during this period the deceased Mangala was living at her parents' house at Pimpalner and she went back to Mulher on 1.11.1990 only and within one month thereafter the accidental death of the deceased occurred. During this period of one month also there is no evidence that the accused No.1 had made such demand or had made any harassment to the deceased on that count. During this period, the accused No.1 was staying at Dhule and there is evidence on record of Gajanan [DW1] to show that the accused was searching for an accommodation and the deceased Mangala had made an enquiry with him as to whether accused No.1 had got the accommodation at Dhule. At any rate, it is, therefore, clear that for a period of about six months prior to the incident of accidental death of Mangala,

there is no evidence that of demand of money or of the assault or abuse etc. meted out to the deceased by the accused No.1.

17. So far as accused No. 3 and 5 are concerned, PW5 -Srawan - the father of Mangala has stated that both of them had gone to Srawan during the period when Mangala was at Pimpalner for the purpose of delivery, and told him that if they desire that Mangala should live happily, they should pay the amount of Rs.15000/- to accused No.1. There is also evidence to show that the same thing was told by the appellant No. 2 and appellant No.3 to Mangala herself but Srawan [PW5] and Mangala both told the appellants Nos. 2 and 3 that they were not in a good financial position to pay the amount. The learned Trial Judge held, on the basis of this evidence, that there was demand made of amount, amounting to a common intention between appellants Nos. 1 to 3 for making demand and therefore the appellant Nos. 2 and 3 have been convicted with the help of section 34 of the Indian Penal Code. However, I find that this view is erroneous. It is to be noted that the appellant No. 2 and appellant No.3 were related to accused No.1, they were resident of Pimpalner and that they were mediated for the arrangement of the marriage between accused No.1 and deceased Mangala. Therefore, it could not be said

that they have common interest both in accused No.1 as well as the deceased. There is nothing on record except their relations with the accused No.1 to show that they had any reason to take the side of accused No.1. It is in the light of this back ground that we will have to consider the evidence as against the appellant No.2 and appellant No.3. The evidence against these two accused is that they told not only to PW5-Srawan - father of the deceased Mangala but also to the deceased herself, if the deceased wanted to live happily, Srawan [PW5] should pay Rs.15000/- to the accused No.1. This is the only evidence. This evidence can be viewed from two angles. One is that, it may be that this was a suggestion or this demand was made by the appellant No. 2 and appellant No.3 for and on behalf of accused No.1; and second, that it may only be a suggestion as a well wisher of the deceased and Srawan [PW5]. It is clear that there is absolutely no evidence to indicate that what they told, about payment of Rs.15000/- to Srawan [PW5] so also to Mangala -the deceased, was at the instance of and for and on behalf of accused No.1. Therefore, the second possibility, when not ruled out, as is the cardinal principle of criminal law that a view which is beneficial to the accused shall have to be taken. And, therefore, it has to be taken that it was merely a suggestion by the appellant No.2 and appellant No.3

just to see that Mangala lives happily and leads happy married life with accused No.1 and nothing more. Under these circumstances, I do not find that conviction of the appellant No. 2 and appellant No. 3 for the offences punishable under Section 498[A] r/w section 34 of Indian Penal Code is proper and correct. The same shall have to be set aside.

18. As regards accused No.1, the evidence is only that which I have discussed above. The question is whether that is sufficient for the purpose of convicting the accused No.1 of the offences punishable under section 498 [A] of the Indian Penal Code. As vehemently submitted by the learned Additional Public Prosecutor that repeated demand of Rs.15000/- was itself was an harassment, leave apart the beating, abuse etc. As against this, the learned Counsel for the appellants submitted that there is no evidence to indicate that the demand of Rs. 15000/- was persistent as would take the place of harassment as contemplated under Section 498 [A] of the Indian Penal Code. He submits that even the assault and abuse by the accused No.1, the evidence is not sufficient. He submits that the harassment has to be the definite object namely to coerce the woman or any person related to her to meet any unlawful demand and that mere harassment by itself is not cruelty. For this

purpose, he has relied on the decision of this court in the case of *RAVINDRA PYARELAL BIDLAN & ORS. VS. STATE OF MAHARASHTRA* reported in *1993 CRI. L.J. 3019.* The relevant observations are as under :-

> *"26. Sub - clause (b) of the explanation to Section 498 -A provides that cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person relating to her to meet such demand. Sub clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract section 498 - A. It must be established that the beating or harassment was with a view to force the wife to commit suicide or to fulfil illegal demands of the husband or the in - laws."*

I am respectfully in agreement with this view of the Learned Single Judge.

19. In addition to this, what is necessary for

proving the offence under section 498 [A] of the Indian Penal Code, is that such harassment with a view to coercing a woman or any person related to her to meet any unlawful demand must be existing at the time of incident. This is so, because the wording used in clause (b) of the explanation to Section 498[A] are as under :-

> *"[b] harassment of the woman where such harassment "is" with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

What is pertinent to be noted in this case is that for a period of six months prior to the incident which occurred on 2.12.1990, there was absolutely no such demand nor was there any abuse or assault of the deceased by accused No.1. Thus, in my view, such harassment as contemplated under section 498 [A] of the Indian Penal Code was not existing when the incident occurred.

20. Apart from this, the evidence i.e. disclosed is to some extent independent of assault and abuse and another independent of demand of Rs. 15000/-. There is also evidence on record to indicate that the demand of Rs. 15000/- persistent for a period of about eight to nine months before the deceased went to her parents

house in June, 1990 for the purpose of delivery. For a period of about 15 days to one month, after marriage there was no such demand. The letter [at Exhibit - 55] dated 14.7.1989, however, stated that the accused No.1 used to beat the deceased on one pretext or the other. She further wrote in the letter that the accused No.1 was also making demand of Rs. 15000/- and she used to say that her father was not in a position to meet their demand. However, from the tenor of the letter, it is doubtful whether the assault was for the purpose of coercing her to meet the demand of Rs. 15000/-. This is so because initially she stated in the letter that accused No.1 used to beat her on the some pretext or the other. She has not specifically stated that the accused No.1 used to beat her because she was saying that her father was not in a position to meet the demand of Rs. 15000/-. It is in the evidence of Yogesh [PW12], he has independently stated these two facts of about beating and making demand of Rs. 15000/-. He has also stated that the deceased used to tell him that accused No.1 used to ill-treat and assault her on account of demand of Rs. 15000/- for the purpose of purchasing a plot at Pune. However, this fact has not been stated by the deceased Mangala in her letter. On the second visit of Yogesh [PW12], some time in May - June, 1990, he has merely stated about the assault to

mangala by accused No.1 but did not state that it was on account of coercing Mangala to meet the demand. This, in the totality of the evidence, at the most, would show that some time in the beginning after marriage that accused No.1 had made a demand of Rs. 15000/- and had also to some extent assaulted and abused her with a view to coerce her to go to her father's house to bring money. When she said that her father had no sufficient financial position to meet the demand. But this can not be said to be the persistent demand to coerce her to meet the demand as would be gathered by the used of the word "harassment". As has been held in the aforesaid decision. Even the word *"harassment"* used in clause [b] of explanation to Section 498 [A] would indicate that a single demand or single incident of assault would not amount to harassment, as the meaning of "harassment", as per dictionary meaning is that

> *"trouble and annoy continually or make repeated attacks."*

21. In this regard, the learned Additional Public Prosecutor has placed reliance on the decision of the Hon'ble Supreme Court in the case of *WAZIR CHAND AND ANOTHER VS. STATE OF HARAYANA reported in AIR 1989 CRI. L.J. 809* for the purpose of making submission

that the persistent demand of money itself is an harassment. However, the Apex Court as held -

> *".....that there was evidence with regard to demand right up to the time when she died that she and her parents were being harassed by Wazir Chand Kanwar Singh and his family members for various dowry articles and also for money."*

It is material to be noted in the instant case before me, that for a period of about six months prior to the incident of death of the deceased Mangala, there was absolutely no demand or even beating or abusing of the deceased by the accused No.1.

22. Under these circumstances, I find that even the conviction of the appellant / accused No.1 for the offences punishable under section 498 [A] of the Indian Penal Code was not proper and can be upheld. Hence I pass the following order :

ORDER

1. The Appeal is allowed.

2. The order of conviction and sentence passed

against the Appellants Nos. 1- Suryakant Dasharath Yeola, 2- Purshottam Raghunath Wani, and 3- Meenabai w/o Purshottam Wani, of the offences punishable under section 498 (A) of the Indian Penal Code is hereby set aside.

3. The appellants, named above, are acquitted of the offences punishable under Section 498 (A) of the Indian Penal Code.

4. Their bail bonds stand cancelled.

5. Fine, if paid, shall be refunded to them.

[S.K. SHAH, J.]